REMARKS

Interview

Applicant requests an examiner interview when the Office considers this amendment and prior to the issuance of the next office action (if any). The Office is invited to contact the undersigned to arrange the interview.

Amendments to the Specification

Paragraph [0028] has been amended to correct a clerical error in the equation. Support for the amendment may be found, for example, later in paragraph [0028].

Claims Amendments

In this amendment, claims 1, 4-6, 12, 17, and 22-23 have been amended. Support for the claim amendments may be found throughout the application as filed. In addition, claims 9 and 20-21 have been canceled. Upon entry of this amendment, claims 1-8, 10-19, and 22-23 will be pending.

Section 112 Rejections

Claims 1, 12, 17, and 20 were rejected under 35 U.S.C. § 112, ¶ 1. The Office Action stated that the application did not show that the contract is entered into prior to a look-back period. Claims 1, 12, and 17 have been amended to clarify that the contract is entered into prior to an end of the look-back period. The application as filed discloses that the contract is entered into prior to an end of the look-back period. For example, Figure 2 shows the contract, which references the look-back period, being entered into at block 40. Subsequently, at block 46, "at [the] end of [the] look-back period" of the contract, it is determined whether a payment is required under the contract. Thus, the contract is entered into prior to the end of the look-back period. Further, it is common sense that the contract would be entered into prior to the end of the look-back period because otherwise, the parties could know at the time of the contract whether a payment was required for the now-concluded look-back period and there would be no need to enter into the contract. Therefore, applicant submits that claims 1, 12, and 17 satisfy § 112, ¶ 1.

Claim 20 has been canceled.

Section 103 Rejections

The pending claims were rejected as being obvious under 35 U.S.C. § 103(a) based on Woodley (Pub. No. 2002/0178111) and Dines (Pat. No. 6,950,806) (and Official Notice for claims 7 and 11). Applicant traverses the rejection on the grounds that the cited references do not teach or suggest all of the elements of the claims.

Focusing initially on independent claim 1, the cited references do not teach or suggest calculating at the end of the look-back period the strip value of the plurality of option strips, where the strip value is compared to a predetermined value ***specified in the contract***, and paying, by the option grantor to the business entity, a payment when the strip value is less than the predetermined value specified in the contract, with no payment being made between the parties when the strip value is greater than the predetermined value specified in the contract.

The cited Woodley reference is very different from the process of claim 1. In Woodley, a financial institution and a client enter into an arrangement whereby the financial institution pays the client when the tracking portfolio cash flows are less than the benchmark portfolio cash flows. *See* Woodley at ¶ [0055]. Conversely, the client pays the financial institution when the tracking portfolio cash flows exceeds the benchmark portfolio cash flows. *See id.* at ¶ [0056] and Fig. 2. The benchmark portfolio cash flows are "a series of cash flows that represents the client's desired financial objective in operating the client's portfolio." *Id.* at ¶ [0055]. The example disclosed in Woodley is that the client's financial objective "may be to achieve a set stream of cash flows from the plant despite the high variability and unpredictability of gas and electric prices." *Id.* ***There is no teaching in Woodley that the benchmark cash flows are specified in a contract entered into prior to the end of the look-back period.***

Also, in Woodley, the client makes payments to the financial institution when the tracking portfolio cash flows exceed the benchmark portfolio cash flows. *See id.* at ¶ [0056] and Fig. 2. Claim 1, however, recites that "no payment is owed between the option grantor and the business entity under the contract when the strip value is greater than the predetermined value." Thus, the cited references also fail to disclose this element of claim 1.

In addition, Woodley does not disclose calculating at the end of the look-back period the strip value of the plurality of option strips and paying, by the option grantor to the business entity, a payment when the strip value is less than the predetermined value specified in the contract. The Office Action states that Woodley discloses this because "Woodley's modeled exposure are periodically calculated ... (applicant's **look-back period**)" and because "the cash flows of the model portfolio and the hedging portfolio are periodically combined (applicants **aggregation**) thereby producing tracking portfolio cash flow." Office Action at ¶ 10, p. 11 (emphasis in original). This argument misunderstands the teachings of Woodley. If the period for when Woodley's model exposure are calculated is the look-back period, as the Office contends, then whether the payment under the contract is to be made would have to be determined based the model exposure calculated at the end of the period, since in claim 1 the payment is determined at the end of the look-back period. Woodley, however, does not disclose that the payments between the parties are made at the conclusion of the period when Woodley's model exposures are calculated. Indeed, contrary to the Office's position, Woodley discloses at ¶ [0070] that payments are made by the parties throughout the term of the contract, not just at the end of some look-back period that corresponds to when the client updates the model exposure.

Also, the combination of the model portfolio and the hedging portfolio, which the Office's contends is the aggregation of claim 1 (*see* Office Action at ¶ 10, p. 11), is not an aggregation of a plurality of option values, as recited in claim 1. Dines also does not disclose aggregating the calculated option values for a strip of options.

For at least these reasons, applicant submits that claim 1 is not obvious in view of the cited references. By virtue of their dependency upon claim 1, applicants submit that claims 2-8 and 10-11 are also nonobvious. In addition, because independent claims 12 and 17 are substantively similar to amended claim 1, applicants submits that claims 12 and 17, as well as their respective dependent claims, are not obvious.

Official Notice

The Office Action states that applicant has not challenged or traversed examiner's use of Official Notice. This is untrue. In prior response, applicant reserved his right to request evidence of the facts for which the Office is taking official notice because it was not clear in the

prior Office Action as to which facts the Office is taking Official Notice. Both the current office action and the prior one argue that certain things "would have been obvious" but obviousness is not a question of fact, but rather is a question of law. *See* Graham v. John Deere Co., 383 U.S. 1, 17 , 148 USPQ 459 (1966). Accordingly, it is improper for the Office to take official notice of an issue of law because the Office can only take official notice of ***facts***. *See* MPEP § 2144.03(C). Therefore, applicant continues to reserve his right to request evidence of the ***facts*** for which the Office is taking official notice because it was not clear as to which facts the Office is taking Official Notice.

CONCLUSION

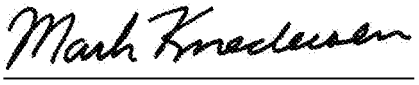
Applicants respectfully submit that all of the claims presented in the present application are in condition for allowance. Applicants' present amendment should not in any way be taken as acquiescence to any of the specific assertions, statements, etc., presented in the Office Action not explicitly addressed herein. Applicants reserve the right to address specifically all such assertions and statements in subsequent responses. Applicants also reserve the right to seek claims of a broader or different scope in a continuation application.

Applicants do not otherwise concede the correctness of the Office Action's rejection with respect to any of the dependent claims. Accordingly, Applicants reserve the right to make additional arguments as may be necessary to distinguish further the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

Applicants have made a diligent effort to properly respond to the Office Action and believe that the claims are in condition for allowance. If the Examiner has any remaining

concerns, the Examiner is invited to contact the undersigned at the telephone number set forth below so that such concerns may be expeditiously addressed.

Respectfully submitted,



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